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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2014-2015

CR-04-0940

Anthony Ray Hinton

v.

State of Alabama

Appeal from Jefferson Circuit Court
(CC-85-3363.10 and CC-85-3364.10)

On Return to Third Remand

KELLUM, Judge.

In 1986, Anthony Ray Hinton was convicted of two counts of capital murder and was sentenced to death. This Court and the Alabama Supreme Court affirmed Hinton's convictions and

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sentence on appeal. Hinton v. State, 548 So. 2d 547 (Ala. Crim. App. 1988), aff'd, 548 So. 2d 562 (Ala. 1989).

In 1990, Hinton filed a Rule 32, Ala. R. Crim. P., petition for postconviction relief, in which he alleged, among other things, that his trial counsel had been ineffective for not hiring a qualified firearms-identification expert for his defense. Specifically, Hinton argued that his trial counsel was unaware that § 15-12-21(d), Ala. Code 1975, which had previously limited funding for experts to \$500 per case, had been amended some two years before Hinton's trial to remove the cap on funding for experts and that counsel had failed to seek "additional funds when it became obvious that the individual willing to examine the evidence in the case for the \$1000 allotted by the court was incompetent and unqualified." (C. 419.) The circuit court denied the petition. After lengthy appellate litigation, the circuit court's judgment was ultimately affirmed by this Court. Hinton v. State, [Ms. CR-04-0940, April 28, 2006] ____ So. 3d ____ (Ala. Crim. App. 2006), rev'd, Ex parte Hinton, [Ms. 1051390, October 17, 2008] ____ So. 3d ____, ____ (Ala. 2008), on remand, Hinton v. State, [Ms. CR-04-0940, December 19, 2008] ____ So. 3d ____ (Ala. Crim.

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App. 2008) (opinion after remand from the Alabama Supreme Court), on return to remand, Hinton v. State, [Ms. CR-04-0940, August 26, 2011] ___ So. 3d ___, ___ (Ala. Crim. App. 2008) (opinion on return to second remand), rev'd, Ex parte Hinton, [Ms. 1110129, November 9, 2012] ___ So. 3d ___, ___ (Ala. 2012), on remand, Hinton v. State, [Ms. CR-04-0940, February 15, 2013] ___ So. 3d ___ (Ala. Crim. App. 2013) (opinion after second remand from the Alabama Supreme Court).

On February 24, 2014, the United States Supreme Court granted certiorari review and vacated this Court's judgment affirming the circuit court's denial of Hinton's claim that his trial counsel had been ineffective for not hiring a qualified firearms-identification expert for his defense. Hinton v. Alabama, 571 U.S. ___, 134 S.Ct. 1081 (2014). The Supreme Court concluded that counsel's failure to know that the statutory-funding limit had been lifted constituted deficient performance under Strickland v. Washington, 466 U.S. 668 (1984), but that no Alabama court had yet addressed the proper prejudice inquiry under Strickland: Whether there is a reasonable probability that, had Hinton's trial counsel known that the statutory-funding limit for experts had been

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lifted, counsel would have hired an expert other than the expert he hired -- i.e., an expert who would have instilled in the jury a reasonable doubt as to Hinton's guilt. Therefore, the Supreme Court remanded this case for an Alabama court to determine whether Hinton was prejudiced by his counsel's deficient performance.

In accordance with the United States Supreme Court's opinion, we remanded this case for the circuit court to make specific written findings of fact regarding the prejudice inquiry set out by the United States Supreme Court. Hinton v. State, [Ms. CR-04-0940, June 13, 2014] ___ So. 3d ___ (Ala. Crim. App. 2014) (opinion after remand by the United States Supreme Court). On remand, the circuit court, in a well reasoned order, found that counsel, in fact, would have hired a different and more qualified expert had counsel known that the statutory-funding limit had been lifted and that there was a reasonable probability that the testimony of a different and more qualified expert would have instilled in the jury a reasonable doubt as to Hinton's guilt. Therefore, the circuit court granted Hinton's Rule 32 petition.

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Because Hinton has received the relief he requested in his Rule 32 petition, this appeal is now moot and due to be dismissed.

APPEAL DISMISSED.

Windom, P.J., and Welch, Burke, and Joiner, JJ., concur.